IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 2ND JANUARY 2007 / 11TH POUSHA, 1928

WA.No. 2348 of 2006

AGAINST THE JUDGEMENT IN WPC.24308/2005 Dated 15/10/2005

APPELLANT: 4TH RESPONDENT.

ALLA INDIA COUNCIL FOR TECHNICAL
EDUCATION (AICTE), REPRESENTED BY ITS
SECRETARY, INDIRA GANDHI SPORTS COMPLEX,
IP ESTATE, NEW DELHI-110 002.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS: PETITIONERS & RESPONDENTS 1 TO 3.

1. ARUN RAGHAVAN, FINAL YEAR B TECH
(ELECTRICAL & ELECTONICS ENGG. EEE)
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2. ARUN G. NAMPOOTHIRI, FINAL YEAR
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3. PRASANTH P.D., FINAL YEAR B.TECH (EEE)
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4. ARUN JOSEPH SOMON,
FINAL YEAR B.TECH (EEE), CALICUT UNIVERSITY
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UNIVERSITY OF CALICUT, CALICUT UNIVERSITY P.O.,
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5. JITHIN BABU. B, FINAL YEAR B.TECH (EEE)
CALICUT UNIVERSITY INSTITUTE OF
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6. UNIVERSITY OF CALICUT, REPRESENTED BY ITS REGISTRAR, UNIVERISTY ADMINISTRATIVE OFFICE, CALICUT P.O., PIN-673 635.

7. CALICUT UNIVERSITY INSTITSUSTE OF ENGG. & TECHNOLOGY, REPRESENTED BY ITS PRINCIPAL, CALICUT UNIVERSITY P.O., PIN-673 635.

8. STATE OF KERALA, REP. BY CHIEF SECRETARY TO GOVERNMENT OF KERALA, GOVT.SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY ADV. SRI. E.S. ASHRAF, S C.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON 02/1/2007 DELIVERED THE FOLLOWING:

V.K. Bali, C.J. & S. Siri Jagan, J.

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W. A. No. 2348 of 2006

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Dated this, the 2nd January, 2007.

J U D G M E N T

Siri Jagan, J.

All India Council of Technical Education has come up in appeal against the judgment of the learned Single Judge in W.P(C) No. 24308/2005 filed by five students of the Calicut University Institute of Engineering and Technology for a direction to the AICTE to grant approval/sanction for B. Tech (Electrical and Electronics Engineering) course conducted by the Calicut University. The short facts necessary for the disposal of this writ appeal are as follows.

2. The petitioners joined B. Tech. (Electrical and Electronics Engineering) course, which commenced from the academic year 2001-2002 and completed the same in March, 2005. Earlier, the University applied to the AICTE for approval of four B. Tech. Courses, one of which was in Mechanical Engineering, by filing formal applications for the same. Later on, realising that instead of B. Tech (Mechanical Engineering) , it would be more feasible to conduct the course of B.Tech. (Electrical and Electronics Engineering), by Ext. P3 communication dated 6-1-2001, which was followed up with Ext. P3(a) dated 16-7-2001, the Registrar of the University informed the AICTE that in the application submitted for approval to start B.Tech. courses in four subjects, the subject B. Tech. (Mechanical) may be deleted and B. Tech. (Electrical and Electronics Engineering) may be substituted in its place. The Government, by Ext. P1 order, granted sanction for starting the courses in four subjects. The University by Ext. P4 communication dated 5-4-2001, granted approval for starting B. Tech course in four subjects, one of which was Electrical and Electronics Engineering. However, the AICTE by Ext. P2 dated 27-6-2001 granted approval for starting the four courses originally applied for,

which, apparently, was done without taking into account Ext. P3 communication issued by the University.

3. In the meanwhile, the University admitted students for the four subjects, including B. Tech. (Electrical and Electronics Engineering), from the academic year 2001-2002. The University repeatedly requested the AICTE to grant approval for the subject Electrical and Electronics Engineering. However, finally, by Exts. P8 and P9 communications dated 17-1-2005 and 26-4-2005, the AICTE informed the University that post facto approval for the above said course cannot be granted. Further, by Ext. P12 communication dated 12-5-2005, the AICTE informed the Government that for starting and running any technical programme in their constituent colleges, the Universities do not require AICTE's approval. However, when the AICTE published the list of approved institutions and courses for the academic year 2004-2005 in its website, the same did not contain the subject Electrical and Electronics Engineering for the Calicut University Institute of Engineering and Technology. The effect of non-inclusion of this course in the website is that the said course passed by the students from the Calicut University would be treated as a course having no approval from the AICTE and therefore worthless. It is in the said circumstances that the students approached this Court with the writ petition challenging Exts. P8 and P9 communications from the AICTE and seeking direction to the AICTE to grant sanction /approval for the B. Tech (Electrical and Electronic Engineering) course conducted by the Calicut University in the Calicut University Institute of Engineering and Technology. A direction was also sought to the effect that the said course does not require the approval of the AICTE and that the course undergone by the students is duly recognised in law.

4. The AICTE, in the statement filed in the writ petition ,

contended that they approved the subject Electrical and Electronics Engineering only by Annexure R4 letter dated 27-6-2005 and it cannot grant post facto approval for the course. Later on, by amending the writ petition, the petitioners prayed for a direction to the AICTE to publish in the website the courses offered by the University which do not require any separate approval of it, but, which are treated as equivalent to the courses having approval of it. In the additional statement submitted by the AICTE, it was contended that even if no approval of the AICTE is required for starting or running a technical course by the University, still, the University is bound to conform to the standards prescribed by the AICTE concerning the various parameters for running the course. The Calicut University has filed a counter affidavit supporting the original petition, pointing out that this is not a post facto approval, but a long pending case since 2001 with the AICTE.

5. Relying on the judgment of the Supreme Court in the decision of Bharathidasan University v. All India Council for Technical Education, [(2001) 8 SCC 676, the relevant portions of which were quoted in the impugned judgment, the learned Single Judge came to the conclusion that the University is empowered under law to start and run the course, B. Tech. in Electrical and Electronics Engineering without the prior approval of the AICTE. The learned Single Judge went on to hold that if the University has not conformed to the standards, norms etc., prescribed by the AITCE for running the courses, the option left to the AICTE is to bring it to the notice of the University Grants Commission so that it may take appropriate action against the University. The learned Single Judge, as a matter of fact, found that the AICTE has not taken any steps in this direction. However, AICTE contended that they were totally in the dark regarding the said course, which contention was found to be

unacceptable by the learned Single Judge in the light of Ext. P3 and subsequent communications addressed by the University to the AICTE. The learned Single Judge further noted that AICTE had, in fact, granted approval for the very same course for the academic year 2005-2006 with the existing facilities. In those circumstances, the learned Single Judge entered a finding that the refusal of the AICTE to grant approval for the said course between 2001 and 2005 is not justified and found fault with the AICTE in taking shelter behind some policy decisions on technical contentions, which are not supported by the provisions of the Act, which provisions, in the light of the interpretation given by the apex Court, would go to show that the order declining grant of approval communicated by Ext. P8 is unsustainable. A case of violation of principles of natural justice was also fouoond in favour of the University on the finding that Ext. P8 was passed without giving an opportunity to the University to put forward its case. Accordingly, the learned Single Judge quashed Ext. P8 and directed the AICTE to reconsider the claim of the students and the Calicut University to grant approval to the course B. Tech. (Electrical and Electronics Engineering) for the period 2001-2005 afresh in accordance with the findings and directions contained in the judgment of the learned Single Judge. There was a further direction by the learned Single Judge that if the AICTE does not approve the course with effect from 2001, it shall publish in the website about the B. Tech. (Electrical and Electronics Engineering) course of the Calicut University as a course which shall be treated as equivalent to a course having the approval of the AICTE as the same is run by the Calicut University directly. This judgment is under challenge in this writ appeal by the AICTE.

6. The appeal is filed by the AICTE on the contention that the interpretation by the learned Single Judge based on the Supreme

Court decision is incorrect and unsustainable. Counsel for the appellant also relies on the decision of Union of India and another v. Kirloskar Pneumatic Co. Ltd., [(1996) 4 SCC 453] to contend that the powers under Articles 226 and 227 of the Constitution cannot be invoked to direct statutory authorities to act contrary to law.

7. On a consideration of the arguments of the learned counsel for the appellant-AICTE as also those of the respondents , we do not find any merit in the contentions of the appellant. We have no hesitation to endorse the interpretation given to the provisions of the Act by the learned Single Judge in the light of the judgment of Supreme Court. Further, we find that the AICTE had not answered the averments by the University that in 2001-2002 itself, they had repeatedly requested the AICTE to include the course in question also for approval from the year 2001 onwards and the AICTE feigned ignorance about the same in spite of the students and the University producing documents to prove their contentions. Further, the AICTE did not find any difficulty in approving the said course with effect from 2005-2006 with the existing facilities. That being so, if at all there is any merit in the contentions of AICTE, that would at the most be hyper-technical. We are not satisfied that we should put the future and fate of a batch of students in peril accepting those purely hyper-technical contentions, which, in fact, did not find favour with the the learned Single Judge nor do they with us. Regarding the Kirloskar Pneumatic Co's case, we are of opinion that the reliance on the same by the appellant's counsel is misplaced since this Court has not directed the appellant to act contrary to law, but only declared the law relying on the Supreme Court decision on the subject, and directed the AICTE to act in accordance with the law so declared..

In the above circumstances, we do not find any merit in the writ appeal and accordingly the same is dismissed. If the appellant has

not complied with the directions in the judgment of the learned Single Judge already within the period stipulated in view of the pendency of this writ appeal, they shall do so within two weeks from the date of receipt of a copy of this judgment.

V.K. Bali, Chief Justice.

S. Siri Jagan, Judge.

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